U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15869478

Date: JUL. 20, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chemical engineer, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the national importance of the proposed endeavor or that the Petitioner is well positioned to advance the proposed endeavor. Additionally, the Director found that the evidence did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
>
> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

In his initial filing, the Petitioner submitted a copy of his bachelor of chemical engineering diploma issued by a Nigerian university in January 2000, along with five letters of recommendation from colleagues within the Petitioner's current employer [redacted]. The Director noted in a request for evidence (RFE) that in order to qualify as a member of the professions holding an advanced degree, the Petitioner needed to submit his transcript along with an academic evaluation to establish the U.S. equivalency of his foreign degree. The RFE further notified the Petitioner that the evidence did not establish five years of progressive, post-baccelaureate employment experience. Specifically, the Director requested evidence in accordance with 8 C.F.R. § 204.5(g)(1), which states that qualifying experience must be documented "in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received."

In his RFE response, the Petitioner provided an academic equivalency evaluation, his transcript, and additional documentation concerning his work with his current employer. The unsigned, one-page evaluation does not contain any indication that the Petitioner's transcripts were considered in arriving at the conclusion that his foreign degree is the equivalent of a U.S. bachelor's degree in chemical engineering. The transcripts are not listed as one of the reference matierals used and we have little indication of how the evaluation company analyzed the Petitioner's specific school, or his credit hours, course content, and grades. Aside from the letterhead with the evaluation company's name, it is unclear who completed the evaluation and how the Petitioner's academic record was assessed. We may, in our

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, we question the integrity of the evaluation because it is not signed and because it does not provide any analysis of the Petitioner's academic record. The Petitioner's transcripts include an incorrect year of birth for the Petitioner, which has not been acknowledged or explained by the Petitioner or the evaluation company. The evidence also included employment offers, letters of recognition and appreciation, email chains among the supervisors and teams with whom the Petitioner has worked, and reports containing the Petitioner's title and role within various projects. Collectively and in conjunction with the Petitioner's résumé, it can be understood that beginning in 2004, the Petitioner has held various positions within the company, including "associate engineer" and "loss prevention and risk engineer supervisor/facilitator."

Although the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, we hereby withdraw this finding and conclude that the Petitioner has not met his burden in this regard. In the RFE, the Director specifically requested employment evidence in the format delineated by 8 C.F.R. § 204.5(g)(1) and the Petitioner did not provide sufficient evidence in compliance with this format. We note that many of the supporting documents are not from the Petitioner's employer, but are from colleagues or are supplemental evidence, such as internal company reports. Much of the evidence does not contain the required details about the authors, a description of the Petitioner's experience and duties, or specific employment dates. From position titles alone, it is not apparent what the Petitioner was responsible for and how his work was progressive in nature. While we acknowledge that the evidence demonstrates continuous work, it is insufficient to simply submit documents without demonstrating how the work is actually progressive.

Due to these evidentiary deficiencies, the record does not persuasively establish that the Petitioner is a member of the professions with an advanced degree.

B. Exceptional Ability

Although the Petitioner has not asserted his eligibility as an individual of exceptional ability, we nevertheless examine the evidence in accordance with this classification. As discussed below, a review of the record indicates that the Petitioner does not meet at least three of the relevant evidentiary criteria.

> An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The evidence of record shows that the Petitioner earned a bachelor of chemical engineering degree from a Nigerian university in 2000, which is further corroborated by his academic transcripts. Accordingly, the evidence establishes that the Petitioner satisfied this criterion.

> Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

While the progressive nature of the Petitioner's work has not been established, documentation in the record does establish that the Petitioner has been employed in the engineering field since 2004. We acknowledge an employment award letter issued in 2016 which recognized the Petitioner's ten years of service. While neither this letter nor the evidence of record explicitly states that the Petitioner's experience was full-time, we conclude that in the totality, the Petitioner has satisfied this criterion by a preponderance of the evidence.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The Petitioner has not submitted evidence that he possesses a license to practice the occupation. Accordingly, the Petitioner has not satisfied this criterion.

> Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

We acknowledge the tax documents evidencing the Petitioner's income in 2018 and 2019, a June 2019 employer letter that references his salary, and payroll documents from pay periods in 2020. While some of the documentation was issued after the filing of the petition and does not serve as evidence of eligibility at the time of filing, the Petitioner has submitted sufficient evidence of his salary.

However, to satisfy this criterion, the evidence must show that the Petitioner "has commanded a salary or remuneration for services that is indicative of his or her claimed exceptional ability relative to others working in the field." 6 USCIS Policy Manual F.5(B)(2). Although, the Petitioner's evidence is credible, he has not provided evidence to establish how his compensation compares to other chemical engineers working in the [redacted] industry in the same geographical area. As such, the evidence does not establish that his income demonstrates exceptional ability. Therefore, the Petitioner has not satisfied this criterion.

> Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The Petitioner has not submitted evidence that he is a member of a professional association. Accordingly, the evidence does not establish that the Petitioner satisfied this criterion.

> Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

As the Director stated, the evidence does not demonstrate the Petitioner has a record of success that distinguishes him from other engineers. The Petitioner submitted copies of numerous reports he authored or reviewed, and which show detailed analysis and site testing as part of risk assessments conducted for the Petitioner's employer. The Petitioner has not submitted evidence that these reports were published outside of his company or that they have been available or utilized either in the broader chemical engineering field or in the [redacted] industry. Although the Petitioner has earned internal company awards and service recognition, the evidence does not suggest that peers, governmental entities, or

professional or business organizations have recognized him for any achievements or significant contributions to the industry.

The letters of recommendation do not describe specific achievements or contributions which the Petitioner made to the field overall. Instead, they largely praise his ability, reference his unique experience and positive qualities, and mention achievements he has had within his particular company. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").[4] Accordingly, the evidence does not establish that the Petitioner satisfied this criterion.

Summary

The record does not support a finding that the Petitioner meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner has not established his eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As previously outlined, the Petitioner must show that he either possesses exceptional ability or is an advanced degree professional before we reach the question of the national interest waiver. We conclude that the evidence does not establish that the Petitioner meets the regulatory criteria for classification as an individual of exceptional ability or that he is a member of the professions holding an advanced degree.

C. National Importance

As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. However, because the Director made additional eligibility findings and the Petitioner alleges error in the Director's decision, we will provide further analysis using the Dhanasar framework.[5]

As a preliminary matter, the Petitioner argues that the Director did not properly analyze the Petitioner's case in comparison to the standard set by Dhanasar. Regarding the national importance standard specifically, the Petitioner argues that the Director must analyze the impact and national importance of his proposed endeavor in comparison to the impact and national importance of Dr. Dhanasar's proposed endeavor. The Petitioner asserts that the Director is legally required to compare the impact of the Petitioner with that of Dr. Dhanasar and cites to the concept of precedent decisions in support.

[4] In addition, the initial cover letter submitted by the Petitioner's counsel contains many identical sentences and phrases found within several of the letters of recommendation. As counsel did not quote these sentences and phrases or acknowledge them as the writing of others, it calls into question whether the recommending authors provided their own authentic opinions and reflections of the Petitioner. We cannot ascertain whether the counsel recycled language from the letters to write the cover letter or if the recommendation letters themselves were not independently written by the stated authors. At minimum, the use of identical sentences by different people diminishes the credibility of not only the letters but also of counsel's cover letter.

[5] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

We acknowledge that Dhanasar is a precedent decision and further acknowledge the concept of precedent decisions and their controlling nature; however, the Petitioner has cited to no legal authority for a one-to-one comparison of two petitioners operating in vastly different fields of endeavor. Dhanasar establishes an analytical framework with which to examine national interest waiver cases, but it does mandate or even suggest that a side-by-side comparison of individual petitioners and endeavors is required. We acknowledge the Petitioner's argument that precedential decisions provide petitioners with advance notice of the standards of approval, however the Petitioner misunderstands the nature of precedential decisions when he concludes that approvals are required for any petitioner with more impact than Dr. Dhanasar. While we utilize the analytical framework set forth in Dhanasar, the record contains only the Petitioner's evidence, facts, field of endeavor, and explanations of the proposed scope of work, not Dr. Dhanasar's. Despite Counsel's insistence that a different standard be applied, the Petitioner always bears the burden to establish his own eligibility by a preponderance of the evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

Initially, the Petitioner provided significant information concerning his past work, but little information concerning the proposed endeavor. Accordingly, the Director requested evidence concerning the Petitioner's proposed future work and in response, the Petitioner stated that he will continue his work as a chemical engineer in the [redacted] industry. Specifically, he will provide technical expertise on process safety engineering and risk management. He identified a current and ongoing project involving the design of the world's largest [redacted] plant located in [redacted] He explained that [redacted] is a [redacted] and that project "will not just protect the environment but significantly improve local air quality and public health through reduction in carbon dioxide (CO2) emissions." His role will be to develop designs and conduct analysis of the plant to assess the safety risks and impact to workers, the environment, and surrounding local communities. In so doing, he will identify corrective and mitigating measures to enhance the safety of the facility. Although the Director did not make a specific substantial merit finding, we conclude that enhancing the safety of [redacted] facilities by assessing risk and identifying corrective measures is of substantial merit.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. The Director determined that that the evidence was insufficient to establish that the Petitioner's proposed endeavor has national importance. As noted in the decision, the record does not demonstrate that the proposed endeavor will extend beyond the Petitioner's employer or that the Petitioner's operations broadly impact the field of chemical engineering or the U.S. [redacted] at a level commensurate with national importance. Similarly, in Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See Dhanasar, 26 I&N Dec. at 893. The Petitioner stated that due to the degree in which the [redacted] industry impacts the U.S. economy, advances in this field are of paramount importance. However, as explained in the Director's decision, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id.

Counsel argues that advances in this field will positively impact the national economy and that the dissemination of the Petitioner's work will impact all parts of the nation. On appeal, Counsel further

states that the Petitioner's "advances specifically in his field have already been used, duplicated, applied, and forwarded throughout numerous large-scale [redacted] projects—including projects that involve numerous other companies and hundreds of engineers," and that these advances are shared nationally and internationally. We have thoroughly examined the entire record but cannot find corroborating support for these statements. The unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988). The Petitioner has not explained what specific benefits his proposed endeavor will add, nor has he explained what "crucial advances" his proposed endeavor will make in the industry. The Petitioner submitted evidence of reports he authored or reviewed, but we have little indication that these reports were disseminated to anyone outside [redacted] or beyond its own projects. Even if evidence of dissemination was provided, we would still find this evidence insufficient because dissemination alone would not establish the impact of the Petitioner's work in the field or on the nation. We do not know, for example, if other chemical engineers conducting loss prevention and risk assessments in the [redacted] industry are aware of the Petitioner's work or whether his work has influenced the safety practices at other companies. Accordingly, it cannot be concluded that the Petitioner's work in the proposed endeavor would have impact that extends beyond his current employer.

Likewise, the claims of positive economic impact have not been substantiated. For instance, the record contains no studies, analysis, articles, or statistics linking the Petitioner's work to any national economic benefits. On appeal, counsel asserts that the Petitioner's specific work within his employer has contributed to the employer's ability to generate millions in economic benefits to the United States and that this also leads to job creation. While we acknowledge these claims, we have little information concerning how the Petitioner's contributions within his employer formed the primary basis for his employer's earnings or served as the impetus for job creation that rises to a nationally important level. The Petitioner submitted recommendation letters which contain information on the Petitioner's past work, but little on his future proposed endeavor. Although the letters contain information on how the Petitioner's work has positively impacted his employer, the authors do not address the work's economic or job creation impact, as opposed to a safety and risk reduction impact for the employer. As such, we have little basis to conclude that it was the Petitioner's work that contributed to his company's earning success and any claimed job creation. Furthermore, the Petitioner has not provided evidence of his company's earnings or how these earnings have substantially impacted the economy as a whole. We have little information on how the Petitioner's proposed endeavor has led or will lead to job creation. For example, the Petitioner has not provided evidence that his work has led to jobs in the past, nor has he submitted estimates of how many jobs, including the type and location, that his endeavor will lead to or create.

The Petitioner argues that the benefits of private-sector capitalism accrue to the entire society and therefore, the employer's earnings provide substantial economic benefit to the nation. However, the Petitioner has not submitted sufficient evidence tying his employer's earnings to substantial economic benefit across society. By this logic, any private-sector capitalist act would benefit the nation's economy such that it would rise to the level of national importance and therefore meet this standard. We disagree. To establish the national importance of the proposed endeavor, the Petitioner must offer more than general claims that a private company's earnings benefit an entire nation on a scale so substantial as to rise to a level of national importance.

The Petitioner argues on appeal that the Director improperly emphasized the geographic scope of the proposed endeavor rather than focusing on its national importance. While the Petitioner emphasizes that his work is in the United States and not in [redacted] as the Director had mentioned, the decision provided several reasons unrelated to geographic scope for why the record did not sufficiently show that the proposed endeavor has national importance. The Director's statements concerning the Petitioner's work in [redacted] even if inaccurate, do not detract from the remaining findings concerning the proposed endeavor.

Because the documentation in the record does not establish that the Petitioner meets the requirements of the underlying classification nor does it establish that the Petitioner's proposed endeavor is of national importance as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.[6]

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. In addition, the evidence has not shown that the proposed endeavor is of national importance. As such, he has not established that a waiver of the job offer and labor certification would be in the national interest of the United States. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

[6] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding prongs two and three of the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).